

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DAVID CINTRON,**

**Plaintiff,**

**Civil Action No.  
9:14-CV-0116 (TJM/DEP)**

**v.**

**DR. EVELYN WEISSMAN, *et al.*,**

**Defendants**

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**THOMAS J. McAVOY  
Senior United States District Judge**

**DECISION & ORDER**

**I. INTRODUCTION**

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In his August 21, 2015 Report, Recommendation, and Order, Dkt. No. 88, Magistrate Judge Peebles addressed several motions filed by the parties, “including (1) plaintiff’s motion seeking the entry of summary judgment in his favor relating to a version of his complaint that has been superseded; (2) defendants’ motion for summary judgment seeking dismissal of the then-operative amended complaint; and (3) four requests by the plaintiff to amend or supplement the operative amended complaint.” Rep. Rec. & Ord., p. 2. Magistrate Judge Peebles granted in part and denied in part plaintiff’s motions to amend the Amended Complaint and for joinder of parties. *Id.* p. 15. Plaintiff has since filed a Second Amended Complaint Dkt. No. 89.

Magistrate Judge Peebles also recommended that the parties' motions for summary judgment be denied without prejudice as moot, and that the parties be given thirty days from any decision adopting the Report Recommendation to submit a renewed motion for summary judgment. Rep. Rec. & Ord., p. 15. Plaintiff has since filed a renewed motion for summary judgment. Dkt. No. 93. Defendants, however, object to the Report, Recommendation, and Order, arguing that "the RR does not promote judicial economy and, therefore, ask this Court to rule on the parties' dispositive motions and stay consideration of plaintiff's motions to amend the complaint." Dkt. No. 92.

## **II. DISCUSSION**

### **a. Order Allowing Amendment**

That portion of Magistrate Judge Peebles' Report, Recommendation, and Order allowing the filing of a Second Amended Complaint is in the nature of an order, not a recommendation. To the extent defendants appeal from this determination, the appeal is denied. A district court judge reviewing a magistrate judge's non-dispositive pretrial order may not modify or set aside any part of that order unless it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a); N.D.N.Y. LOCAL RULE 72.1(b)); Mathias v. Jacobs, 167 F. Supp.2d 606, 621-23 (S.D.N.Y. 2001). Findings are clearly erroneous when the reviewing court is firmly convinced the lower court decided an issue in error. Lanzo v. City of New York, 1999 WL 1007346, \*2-3 (E.D.N.Y. Sept. 21, 1999). The Court is not convinced that Magistrate Judge Peebles erred in allowing plaintiff to file a Second Amended Complaint that substituted Dr. Ira Weissman for Dr. Evelyn Weissman, and that added "two minor allegations." Def. Obj., p. 1.

**b. Recommendation to Deny Summary Judgment Motions**

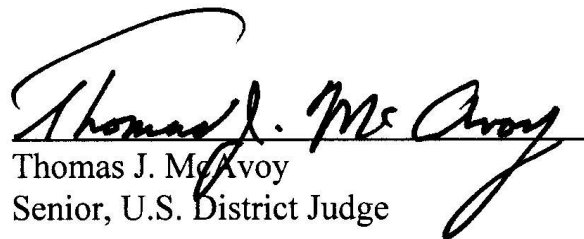
In light of Magistrate Judge Peebles' decision to allow an amendment to the Amended Complaint, Magistrate Judge Peebles' recommendation to deny the summary judgment motions with leave to renew was not an error or an inefficient use of judicial resources. Rather, an inefficient use of judicial resources would have been deciding the summary judgment motion on a pleading that was destined to be amended. Therefore, the Court accepts and adopts Magistrate Judge Peebles' recommendations for the reasons stated in his report. See 28 U.S.C. § 636(b)(1)(After reviewing the report and recommendation, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.").

**III. CONCLUSION**

For the reasons discussed above, the Court **AFFIRMS** Magistrate Judge Peebles' decision to allow plaintiff to file a Second Amended Complaint; and **ACCEPTS AND ADOPTS** the recommendations contained in Magistrate Judge Peebles' August 21, 2015 Report, Recommendation, and Order (Dkt. No. 88). Accordingly, the parties' motions for summary judgment (Dkt. Nos. 49, 70) are **DENIED, without prejudice, as moot**. The parties are given leave of thirty (30) days from the date of this Decision and Order to submit renewed motions for summary judgment.

**IT IS SO ORDERED.**

**Dated: September 23, 2015**

  
Thomas J. McAvoy  
Senior, U.S. District Judge